

Minutes of the Board of Adjustment meeting held on Monday, August 13, 2012, at 5:30 p.m. in the Murray City Municipal Council Chambers, 5025 South State Street, Murray, Utah.

Present: Travis Nay, Vice-Chair
Rosi Haidenthaller
Preston Olsen
Tom Halliday
Chad Wilkinson, Community Development Manager
Ray Christensen, Senior Planner
Tim Tingey, Administrative & Development Services Director
G.L. Critchfield, Deputy City Attorney
Citizens

Excused: Roger Ishino, Chair

The Staff Review meeting was held from 5:15 to 5:30 p.m. The Board of Adjustment members briefly reviewed the applications. An audio recording is available for review in the Community & Economic Development office.

Travis Nay explained that variance requests are reviewed on their own merit and must be based on some type of hardship or unusual circumstance for the property and is based on state outlined criteria, and that financial issues are not considered a hardship.

APPROVAL OF MINUTES

Rosi Haidenthaller made a motion to approve the minutes from July 9, 2012 as written. Preston Olsen seconded the motion.

A voice vote was made. The motion passed, 4-0.

CONFLICT OF INTEREST

There were no conflicts of interest for this agenda.

CASE #1457 – DELYNN BARNEY – 4902 South Box Elder Street – Project #12-97

DeLynn Barney was the applicant present to represent this request. Ray Christensen reviewed the location and request for the expansion to a nonconforming single family residential use for a new 220 sq. ft. carport addition to be located in front of the existing carport attached to the dwelling and a new 280 sq. ft. detached workshop/storage building to be located behind the dwelling. The property is located in the MCCD (Murray City Center District). The MCCD zone allows buildings to be located up to the front property line or within 25 ft. from the back face of the curb and gutter. The proposed front, rear, and side yard setbacks are allowed subject to compliance with applicable building and fire codes related to construction materials. The proposed expansion is consistent with the purpose of this title as it allows for a reasonable expansion of an existing use without an unreasonable impact on adjoining properties. Based on review and analysis of the application material, subject site and surrounding area, and applicable Murray Municipal Code sections, the Community and Economic Development Staff finds that the proposal meets the standards for an expansion/alteration of a nonconforming use or development. Therefore, staff recommends approval subject to the following conditions:

1. The proposed addition shall meet all of the requirements of building and fire codes and the applicant shall obtain a building permit prior to construction.
2. The proposed addition shall require approval of a Certificate of Appropriateness by the Planning Commission.

Mr. Halliday asked Mr. Barney how close to the property line is the existing carport. Mr. Barney stated they sit about 5-6 feet. He said that he can stretch his arms out and touch the building on one side and the fence on the other.

Mr. Nay asked if Mr. Barney plans to have a driveway leading to the shed at the rear of the property. Mr. Barney responded that he doesn't plan to put in a driveway, but he would like to put in a sidewalk in front of the house and a sidewalk from the back of the house to the workshop.

Ms. Haidenthaller made note that the Board did receive an email from Mike Dollard, property owner to the south. Mr. Dollard expressed concern with regard to the addition as there is a property-line dispute between the two properties. Mr. Barney commented that there are differences in measurements. In particular there is a 10 ft. section that the south property owner believes he owns.

Mr. Nay asked if there had been any legal actions taken on the matter. Mr. Barney responded that they have not taken legal action.

Ms. Haidenthaller commented that the Board of Adjustments is unable to take into consideration the fact there might be a dispute on the property that has not been legally addressed. Ms. Haidenthaller stated that if there is a civil dispute in the future and something happens with the property line, depending on the outcome, it is possible that the applicant might have to take down the proposed carport. Mr. Barney commented that had he known about the email that his neighbor sent, he would have brought in more documentation on the property lines.

Ms. Haidenthaller asked staff about the percentage of covered buildings on the property with the sheds and carports. Mr. Wilkinson responded that there are unique issues associated with the property which include the residential use which has already been established, and that the property is not located in a residential zone. Therefore, when analyzing this property there are a different set of standards than the usual residential zone.

Ms. Haidenthaller asked if there is a minimum width between the old sheds and the new one. Mr. Wilkinson stated that there might be a building code set back, but in terms of the zoning standards there isn't a required minimum separation. Therefore, if the building code states there must be a 3 ft. setback, that's would be the requirement.

The meeting was opened for public comment. No comment was made and the public comment section was closed.

Ms. Haidenthaller made a motion to approve the expansion/alteration of a nonconforming use to allow for a carport and shed, subject to the following conditions:

1. The proposed addition shall meet all of the requirements of building and fire codes and the applicant shall obtain a building permit prior to construction.
2. The proposed addition shall require approval of a Certificate of Appropriateness by the Planning Commission.

Mr. Halliday seconded the motion.

Vote recorded by Ray Christensen.

A _____ Mr. Halliday

A _____ Mr. Olsen

A _____ Ms. Haidenthaller

A _____ Mr. Nay

Motion passed, 4-0.

Mr. Olsen made the motion to approve the Findings of Fact as written by Staff. Ms. Haidenthaller seconded the motion.

A voice vote was made. Motion passed, 4-0.

CASE #1458 – BRANDON JENSEN – 602 East 5640 South – Project #12-98

Brandon Jensen was the applicant present to represent this request. Ray Christensen reviewed the location and request for a side yard setback to be less than the 8 foot minimum and a second variance request for a total combined side yards to be less than required 20 foot minimum. The applicant is requesting the variance in order to construct a new garage, main level and second story addition extending into the side yard. Murray City Code Section 17.100.080.B.C. requires a minimum 8 foot side yard and combined total side yards to be a minimum 20 feet wide. The applicant has an existing two car carport on the property. The applicant is requesting a 6 foot 6 inch side yard setback variance on one side of the dwelling and 8 foot 3 inch total side yard setback variance to construct a new garage, main level and second story addition extending into the side yard. The applicant is proposing a 2 foot 6 inch setback on one side and 11 foot 9 inch total side yards, measured at the narrowest side yard location. The information obtained from the Salt Lake County Assessor's office indicates the house was built in 1957, but the El-Rancho Subdivision was recorded in 1956. The effective zoning ordinance, which was adopted in 1951, required total side yards of 20 feet and a minimum of 8 feet on one side, which is the same as the current ordinance. The typical lot widths in the El-Rancho subdivision average between 70 feet to 75 feet wide and many of the lots are narrower at the back of the lots. This lot is typical with other lots in shape and size in the El-Rancho subdivision and is not unique. A review of variance records for this residential area by staff shows there were no side yard setback variances which allowed this type of large encroachment into the side yard setback areas. The appearance of the addition or economic benefit to the applicant is not legal grounds for a variance. With a staff survey of the El-Rancho subdivision, there are several illegal carport additions into the required side yards which may be an enforcement issue. Generally the homes in this area comply with the minimum setback requirements. One of the elements that were looked at in addition to the zoning regulations was the power pole on the side yard. Tom

Harvey from the Murray Power Department reviewed this variance request and has indicated that there would not be sufficient clearance to the existing pole. There is a 5 foot 5 inch clearance required by the National Safety Code for the line that extends off the house to the pole. Both the pole and the line would be too close and would therefore violate the code requirements. Based on review and analysis of the application material, subject site and surrounding area, and applicable Murray Municipal Code sections, the Community and Economic Development Staff finds that the proposal does not meet the standards for a variance. Therefore, staff recommends denial.

Brandon Jensen, 602 East 5640 South, stated that he moved to this particular location because he really likes the area. Mr. Jensen indicated that he did not necessarily buy that property for the structure as it exists, but with the hopes of making improvements. He would like to bring the house up to code to help increase the overall appearance of the neighborhood as well as the property value. Mr. Jensen provided the Board of Adjustments with an addendum to the variance. The addendum indicated that he has decided to decrease the width of the addition by 14 inches, which would result in the rear corner being a 4 feet 2 inches off set and 5 feet 3 inches in the front.

Mr. Halliday asked if the power pole is still too close. Mr. Jensen responded in the affirmative, but stated that he would address that later in his presentation. Mr. Jensen had considered a detached garage, but due to the power company easement, setback requirements, side yard access and the depth of the garage, the garage would have been too close to the existing structure and therefore not feasible. Mr. Jensen gave a breakdown of the lot sizes in his neighborhood, emphasizing that his lot is the only one that decreases to 60 feet in the rear. He stated that in his opinion, when the planning and zoning staff were researching the neighborhood setbacks, they were only considering the El Rancho subdivision and not the surrounding developments. The only feasible place to add a garage is on the west side of the property. Not only will this structure allow him to place his vehicles and personal property inside, but will increase the value and beautification of the neighborhood. In section B of the staff report it states that other lots and homes in the neighborhood are similar in size. Of the 53 lots being considered in this report, only 3 of them narrow to the back, his being one of them. He believes the verbiage used "many other lots" is overstated. He stated that he doesn't believe that the addition to this property is contrary to public interest as many aspects of the area have been improved and the demographics have changed over time. He stated that he projects more homes in the neighborhood will also be improved. He stated that his hardship is that his lot is smaller and narrower than surrounding properties; he is deprived the privileges that the majority of his neighbors have with remodels/additions and there is virtually no other place for him to build this structure. Mr. Jensen stated that he met with someone at the power company and inquired about putting his house on underground power. At that time he also discussed putting the neighbors to the west on underground power as well. The power pole that is currently there feeds his house, but the power company determined that because he would be increasing the size of the service, they would pull the power off of another pole and abandon the other power pole near his house. Both houses would feed off of the pole away from his house.

Mr. Olsen asked if Mr. Jensen had received the email that was sent from Tom Harvey of the Power Department. Mr. Jensen responded he did not receive the email.

Ms. Haidenthaller made note for the record that Tom Harvey from Murray City Power sent an email that reads: "After meeting on site to look at the proposed addition, we determined that there would not be sufficient clearance to the existing pole or the secondary tri-plex. The National Safety Code requires 5ft. 5 inches of clearance to both the pole and the tri-plex. The proposed addition would be only 2 ft. from the pole which would violate code requirements."

Ms. Haidenthaller stated that without approval from the power company Mr. Jensen is still closer than 5 ft. 5 inches and is in violation of code. Mr. Jensen stated that he would have liked it if the power company would have contacted him before they came out and the meeting that he had with the power company last fall made it seem like they were more than happy to install underground power for both he and his neighbor. Mr. Jensen feels that it would have been appropriate for someone from the power company to be in attendance at this meeting or at least included him when they came out to his property. He stated that he is in construction and understands the local codes and requirements. As a side note, the construction access would be on the left side of the property.

The discussion was then opened up to public comment.

Jonathan Russell, 5504 White Springs Drive, stated that he was on the Board of Adjustment for several years and he has never seen anyone this prepared. From his standpoint when he was on the board, he felt it was his responsibility to make sure he did everything he could to allow the homeowner full use of their property, as long as they could prove they have a hardship. Mr. Russell used the five criteria when making decisions as to whether a variance should be granted. He feels that Mr. Jensen has done a very good job of addressing each one of those criteria. The biggest hardship that Mr. Russell sees is the unique size of the property. In his opinion, he would grant the variance based on working out a feasible solution with the power company. Mr. Russell stated that Mr. Jensen's proposal will improve the neighborhood and urges the board to grant the variance based on the stipulation he has advised.

Jim Lowe, 627 East 5640 South, stated that he lives across the street from Mr. Jensen. He stated that anything that is done to beautify the neighborhood is great and he likes seeing the older homes remodeled and taken care of. He has also put his power underground and he would like to see more lines underground. He stated that he is at the meeting in support of Mr. Jensen.

Michelle Christensen, 601 East Walnut Brooke Drive, stated she is an acquaintance of Mr. Jensen and has seen some of his work. She stated that Mr. Jensen is meticulous, organized, methodical and admirable. She feels that he will be creating something better for the community and make those that have properties that are not kept up feel like they need to step up their game. Ms. Christensen stated that burying the power lines would be a good thing as they are an eyesore. She feels that Mr. Jensen will take the time to do the job correctly and in line with the city's rules and ordinances.

Leslie Woodmansee, 5661 Shady Farm Lane, stated that she used to live in a house near Mr. Jensen with the identical floor plan. She explained that the house Mr. Jensen is in was actually vacant for several years, so she was happy when Mr. Jensen purchased the home with the intent to improve it and add value to the surrounding

homes in the neighborhood. Ms. Woodmansee stated that in the past there has been some neighborhood vandalism and the suspects have hidden in Mr. Jensen's carport, so she is in favor of him upgrading and adding an element of safety and that Mr. Jensen has her full support.

Allen DeMann, 5693 South 675 East, stated that his home is two streets over from Mr. Jensen's property. He stated that he has had a high definition survey to take a look at the property. The issues that the survey company came up with were similar to the issues the city had come up with. He stated that that Mr. Jensen has addressed those issues. He agrees with Mr. Russell in that this variance should be approved contingent upon working something out with the power company. He stated that the improvements that Mr. Jensen would like to make would be an improvement to the overall neighborhood. Mr. DeMann asked Mr. Christensen if putting the power underground would help this issue. Mr. Christensen responded that he has not heard anything from the power department in this regard. Mr. DeMann likes the idea of putting the power underground and thinks it would add to the neighborhood.

The public comment section of the meeting was closed.

Ms. Haidenthaller recognized that Mr. Jensen does have the right to improve the home that he has purchased in a way that is beneficial. However, there are issues that must be considered. The purpose of the code for the side yard setbacks is to separate the homes as a fire barrier, but also to provide open space. She stated that just because some things have happened on properties throughout the neighborhood, doesn't mean they have set precedence. In addition, a two car garage isn't necessarily a right. On the other side of things, Mr. Jensen did make a point about the city not including him when they came out to take a look at his property and discussing the power line situation. Ms. Haidenthaller stated that she would have a hard time granting a variance unless she had something in writing from the power company that they are on board.

Mr. Wilkinson clarified that this issue came up earlier today and had there had been time, the applicant could have been involved as well. He stated that had there been some sort of note on the site plan stating that there was intention to bury the power line, this might not have been an issue. The city departments don't always communicate or coordinate when they go out on a site. He stated that the power department isn't always notified of variance requests. He agreed that it would have been nice if all parties involved could have met on site together and have a discussion, but in this case this issue was brought up late in the day and the Community and Economic Development department had to work on getting the information together quickly to get the information to the Board of Adjustments for the meeting.

Public comment was reopened.

Mr. Jensen wanted to acknowledge Mr. Wilkinson and his staff for working with him, but still feels it would have been nice to receive a phone call. Mr. Christensen stated that he did call Mr. Jensen that afternoon. Mr. Jensen responded that the phone call was made to him after the city had already made the discovery. The power code is an IBC code and has no stipulation with variances and that is why it is not on the plan. He stated that he is applying for a variance, not an adjustment to an IBC code. That would be addressed in the building department and with the power company. He stated therefore,

he did not show the power line on the site plan because it was not applicable for the variance. In hind sight he wishes that he had put it on and shown the underground feeds.

Mr. Halliday asked if he was thinking of burying the neighbors as well and providing the meter box. Mr. Jensen responded in the affirmative. Mr. Jensen stated that the fire code regulations in the IRC require a fire rated wall when within 3-5 feet of a property line. He stated that he is aware that he needs to do 5/8 inch sheet rock on the inside as well as exterior in the garage and additional floor as well as "type X" with a weather guard on the outside. He would also put a cementuous finish on the outside that would add additional fire rating and protection.

The public comment section of the meeting was closed.

Ms. Haidenthaller asked Mr. Wilkinson what the IBC code is. Mr. Wilkinson responded by identifying the IBC as the International Building Code. However, his understanding of this is that it is a power and safety code. He explained that this discussion is about two separate types of codes. The building codes cannot be varied or waived by the Board of Adjustment. Regarding other properties along the road, it is unclear whether or not easements would be required that would further limit the amount of expansion. He stated with regards to the variance, the board needs to look at the five criteria stated in the staff report and whether or not this proposal complies with those criteria.

Mr. Olsen stated that he typically is in favor of granting variances for land owners and his vote is leaning in that direction. There are some points that have been brought up such as it being a unique lot in that it is only 70 feet in width and narrow to 60 feet in the back.

Mr. Halliday stated that he rents out property in Murray, and that property has a carport. Unfortunately due to the codes, he is unable to put a garage on it. That being said, he is not opposed to Mr. Jensen building a garage, but he doesn't know if it is necessary to be so close to one side of the property. Mr. Jensen presented the board a 3-D rendering of the house and addition.

Mr. Halliday asked Mr. Jensen how close his house is to the property line. Mr. Jensen responded that the home is 9 feet 3 inches in the rear yard 10 feet 4 inches at the front. Mr. Halliday asked how close his neighbor was. Mr. Jensen responded that it was the same.

Ms. Haidenthaller stated that the adjacent neighbor to Mr. Jensen is a corner lot, therefore, that area is his back yard which basically means there is no back yard. Mr. Jensen stated that the neighbors' back yard is actually on the south side of the home.

Ms. Haidenthaller asked what would happen if the variance is granted and the National Safety Code requires the 5 foot 5 inch clearance of the power pole, in other words, does the variance take precedence over the power company required separation. Mr. Wilkinson stated that the National Safety Codes will take precedence as it is pertaining to fire, life, and safety issue. He expressed concern that they do not have data of what the code is on how close the structure could be to the buried power line. The current code is 8 feet. Typically the power set backs in a side yard is 7 1/2 feet. This lot is an existing lot that was smaller to begin with and is in an area where the code has been

established.

Mr. Halliday asked if the variance is granted, how it would affect the neighbor's property values by being so close to the dividing wall, stating that the reason codes are in place is to protect surrounding properties as well.

Ms. Haidenthaller made a suggestion to table their decision until the September meeting, pending further investigation and input from the power company. Both Ms. Haidenthaller and Mr. Nay commented that they would prefer having more information before making a decision. Mr. Halliday mentioned that it would be nice to see the information, but doesn't think that it will have any bearing upon what this application and is a completely separate issue.

Ms. Haidenthaller made a motion to postpone their decision until September pending a report from the power company regarding the location of the power line and how close the foundation is permitted to be and still be within code, and if they would require a utilities easement.

This motion died for lack of a second.

Mr. Olsen commented that he agrees with Mr. Halliday in that the issue with the power company is not applicable to voting on the variance. Ms. Haidenthaller reiterated that she doesn't want to make a decision on an issue only to come back later to find out that they have created a problem that wouldn't be in conjunction with the power company's requirements. Mr. Nay stated that granting a variance to an applicant for something that will need to be rezoned doesn't seem right. In addition, the board is not able to take into consideration the economics of the situation. However, the garage could be designed and modified within the required criteria. Mr. Olsen made note that in the past there have similar variances.

Mr. Olsen stated that he thinks it is a very good project and will make the neighborhood look better. However he does feel that ordinances and codes need to be adhered to as having a two car garage is not a necessity. Mr. Halliday concurred. Mr. Halliday stated that he does not agree with building so close to the property line. He asked staff, if the board chooses to deny this variance, could the applicant come back and modify the plans or visa versa. Mr. Christensen stated that the applicant could come back with a different proposal. Mr. Halliday then asked if the applicant would have to pay additional fees to do so. Mr. Wilkinson responded in the affirmative, stating the fee covers the notice that has to be sent out to his neighbors.

Mr. Wilkinson stated that it is difficult to comment on any modification simply because staff has not seen the new plan or to know what proposals will move forward. Mr. Halliday's stated that the applicant would need to give up part of the garage, making it a one and one-half car garage, which would increase the setback by 3 feet, and would bring the front corner of the structure into compliance. Mr. Wilkinson stated that the variance being proposed is for a different issue, not the design of the structure and this request is for a two-car garage.

Mr. Halliday stated that this property was annexed into Murray City from Salt Lake County and he doesn't believe that Salt Lake County required them to make a variance.

Mr. Wilkinson stated that the setbacks for the dwelling were approved by the county and is within inches of meeting Murray's setback requirements.

Mr. Olsen made a motion to grant the variance, based on the applicant's addendum.

Ms. Haidenthaller seconded the motion.

Vote recorded by Ray Christensen.

N _____ Mr. Halliday

A _____ Mr. Olsen

N _____ Ms. Haidenthaller

N _____ Mr. Nay

Motion failed, 1-3. The variance is denied due to not receiving majority vote.

Mr. Halliday made the motion to approve the Findings of Fact as written by Staff.

Ms. Haidenthaller seconded the motion.

A voice vote was made. Motion passed, 3-1.

OTHER BUSINESS

There was no other business to discuss.

Meeting adjourned.

Chad Wilkinson, Manager
Community & Economic Development